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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/731,115
Filing Date: December 06, 2000
Appellant(s): REICHARDT ET AL.

Brian E. Mack
(Registration No. 57,189
For Appellant)

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 16, 2008 and May 14, 2008 appealing from the Office action mailed March 1, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,177,931	ALEXANDER ET AL.	6177931
6,481,012 B1	Gordon et al.	11-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Objections

1. Claims 1, 3-8, 29, 31-36 are objected to because of the following informalities:

In claims 1 and 29, the limitation “the first display” and “the interactive application display” in lines 8-9, 11-12 of claim 1 and lines 9, 11-12 of claim 29, should be replaced as – **the first interactive application display**—

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, 74-80 are rejected under 35 U.S.C. 102(e) as being anticipated by Alexander et al. (US 6,177,931).

Regarding claim 1, Alexander teaches a method for providing access to a passive program guide or barker channel (providing access to backer channel such as television program, video clip, or other information associated with particular channel displayed on particular portion of the display screen) and interactive content (e.g. icon/advertisement/detail information) from an interactive application (interactive program guide on screen 10 – figures 1, 5, 9), comprising:

providing a branded selectable option having a product brand logo graphic of a provider of the passive program guide or barker channel and interactive content (providing an EPG screen with selectable interactive ads windows 14,16, Grid guide 22, PIP window, etc. with interactive icons having logo graphic of a provider e.g., FOX, CBS, etc. of the barker channel (e.g. news program/ad, television program, video clip, etc. of the associated channel) and interactive content (e.g., web address, ad information, detail information, etc.– see including, but are note limited to, figures 1-7, 8-

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10, col. 3, lines 56-62, col. 4, lines 15-43, col. 13, lines 50-63, col. 17, lines 40-67, col. 19, lines 15-45, col. 20, lines 1-28, col. 24, lines 45-55, col. 26, lines 4-18) within an interactive application display (within interactive program guide before the ad/icon/provider is selected/highlighted- figure 1);

providing, in a second display replacing the first display (interpreted as the display after the new icon/ad/provider, etc. is selected/highlighted that replacing previous display – figures 1-7, 8-10, col. 3, lines 56-62, col. 4, lines 15-43, col. 13, lines 61-67, col. 14, line 48-col. 15, line 31, col. 17, lines 40-67, col. 18, lines 13-67, col. 19, lines 15-45, col. 20, lines 1-28, col. 26, lines 4-18), the passive program guide or barker channel and interactive content from the provider in response to a user selecting the option from the interactive application display is met by providing television program, video clip, or information associated with a particular channel (e.g. selected channel) and interactive content such as icon of detail information, icon of provider, web address, etc., that is associated with the selected/highlighted icon/ad/provider, from the provider such as advertiser, CBS provider, FOX provider, etc. in response to a viewer selecting/highlighting an icon/ad window from the interactive program guide (see include, but are not limited to, col. 3, lines 56-62, col. 4, lines 13-61; col. 5, lines 5-14; col. 8, lines 4-17, lines 45-64; col. 10, lines 43-51, col. 13, lines 46-67; col. 14, line 47-col. 15, line 31; col. 17, lines 40-67, col. 18, line 15-col. 19, line 45, col. 20, lines 1-28, col. 26, lines 4-18);

“providing additional information on the interactive content in response to the user selecting the interactive content” is met by providing detail information in response

to user selection of the ad/provider/channel/title icon or providing additional detail information in response to user selection of the detail icon (see include, but are not limited to, figure 5, 9-10b, col. 17, lines 45-65).

Regarding claim 3, the additional claimed featured for the interactive content comprises an alert icon is met by the interactive icons on the interactive program guide (figure 1) or icon of the on screen notifications (col. 15, lines 5-22);

the additional claimed feature of providing additional information on the interactive content comprises providing a merchandising opportunity to the user in response to the user selecting of the alert icon is met by providing additional information of the interactive content comprises detail information of the television program or merchandise such as detailed textual description of the program, information about actors and actresses, information about production of the program, production related information, etc. in response to user selecting of the interactive icon (col. 14, line 50-col. 15, line 22; col. 15, lines 47-50; col. 17, line 50-col. 18, line 67, figures 1, 5,6).

Regarding claim 4, the additional claimed feature of the alert icon is overlaid onto the passive program guide or barker channel is met by the interactive program guide or the on screen notification icon is overlaid onto full screen television program (col. 3, lines 55-61; col. 7, lines 20-30; col. 15, lines 4-20).

Regarding claim 5, the additional feature of the interactive content comprises a television program listing is met by television interactive program guide (figure 1, col. 7, lines 19-30) or a title/channel of program that may be of interest to viewer provided as on screen notification (col. 14, lines 48-67);

the further claimed feature of providing additional information on the interactive content comprises providing additional information for the television program listing in response to the user selecting the television program listing is met by providing the entire title and detail description/additional detail description of the program in response to user selecting a particular icon/detail information on the interactive television guide (figure 1 and col. 15, lines 52-64, col. 17, line 45-col. 18, line 67).

Regarding claim 6, the additional claimed feature of the interactive program application is an interactive television guide is met by interactive program guide on screen (10 – figure 1); and the further claimed feature of the branded selectable option is a branded selection menu option of the interactive television guide is met by interactive grid guide and/or interactive ads windows and/or icon/provider on the interactive program guide (figures 1, 5).

Regarding claim 7, Alexander discloses data in the interactive program guide can be downloaded from Internet and displayed on the screen (col. 8, lines 36-64; col. 18, lines 1-67). Inherently, the interactive application is a web browser for displaying the downloaded data.

Regarding claim 8, the further claimed feature of providing the passive program guide or barker channel comprises tuning equipment associated with the user to a television channel is met by providing the television program/on screen notification, additional information, etc. comprises tuner associated with the viewer to a television channel (col. 7, lines 10-18; col. 30, line 60-col. 31, line 8).

Regarding claim 18, Alexander discloses a method for providing advertisements within an interactive application implemented at least in part on user equipment (figure 1) comprising:

providing branded passive programming associated with an advertisement with a brand inserted into the passive programming to the user equipment (e.g., providing television programming associated with an advertisement with provider/source/ network such as CBS, advertiser, FOX, etc. inserted during the telecast of chosen television program to the viewer equipment – see include, but is not limited to, figure 5, col. 6, line 65-col. 7, line 18, col. 32, line 61-col. 33, line 8, col. 33, lines 26-50, col. 34, line 55-col. 35, line 13);

displaying on the user equipment an alert icon overlaid on the currently displayed branded passive programming that indicates availability of additional information associated with the currently displayed branded passive programming (e.g. displaying on the user display screen an on screen notification/icon/title/channel, etc. overlaid the program being viewed that indicates any number of possible items of information

associated with the program being viewed, or indicates the availability of additional information by displaying an detail information icon – figure 1, 3, 6,8 –10b; col. 7, lines 19-30; col. 14, line 48-col. 15, line 31; col. 17, col. 17, line 40-col. 18, line 67);

providing a user associated with the user equipment with an opportunity to select the alert icon to indicate a desire to access additional information associated with the branded passive programming (providing a viewer associated with the user television equipment with an opportunity to select the on screen notification/icon/channel, title, detail icon, or any icon on the screen display using remote control device and user interface to indicate a desire to access additional information associated with the program – col. 17, lines 48-67, col. 18, lines 33-67);

providing an interactive display on the user equipment in response to the user selection, wherein the display comprises an advertisement associated with the brand of the currently displayed branded passive programming (e.g. providing an interactive display such as another interactive program guide display that comprises selected/highlighted icon, or web site, or advertisements in response to user selection/highlight of an icon, a program, an ad, etc. wherein the new display screen comprises a new advertisement (i.e. video clip, detail description, website, chat room, etc) associated with the brand of program currently displayed – see including, but are not limited to, col. 17, lines 48-67; col. 18, line 33-col. 19, line 45; col. 19, line 62-col. 20, line 12, col. 26, line 57-col. 27, line 2; col. 34, line 10-col. 35, line 18).

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Regarding claim 19, the further claimed feature of the passive programming is a television program, a commercial, a pay per view program, or a passive video product segment is met by a television program displayed on PIP window or advertisement displayed in ads windows 14, 16 – figure 1).

Regarding claim 20, the further claimed feature of retrieving the advertisement is met by retrieving advertisement in ad window, or on screen notification, or retrieving additional information of a program (see include, but are not limited to, col. 17, line 50-col. 18, line 67).

Regarding claim 21, the further claimed feature of retrieving an advertisement according to a schedule is met by retrieving on screen notification a certain amount of time before the program begin or retrieving particular advertisement according to particular program displayed on the screen (col. 25, line 50-col. 26, line 60; col. 33, lines 26-65).

Regarding claim 22, the further claimed feature of retrieving an advertisement according to a real time flag is met by retrieving among other things, additional information about the particular event involving the astronauts according to an event involving astronauts described by news broadcaster while watching the news program (col. 18, lines 54-67).

Regarding claim 23, the additional claimed limitations correspond to the additional limitations as claimed in claims 7, and are analyzed as discussed with respect to the rejection of claim 7.

Regarding claim 24, Alexander further discloses the interactive application is an interactive television program guide (interactive program guide – figure 1); and providing the advertisement in the interactive application display comprises providing the advertisement as a panel advertisement (Ad windows or Grid guide) in the interactive television program guide (interactive program guide) – figure 1.

Regarding claims 29, 31-36, 46-52, the limitations of the system as claimed correspond to the limitations of the method as claimed in claims 1, 3-8, 18-24, and are analyzed as discussed with respect to the rejection of claims 1,3-8, 18-24.

Regarding claims 57, 59-64, 74-80, the limitations of the system as claimed correspond to the limitations of the method as claimed in claims 1,3-8, 18-24, and are analyzed as discussed with respect to the rejection of claims 1, 3-8, 18-24.

(10) Response to Argument

A. Claims 1, 3-8, 29, 31-36, 57, 59-64:

1. The Examiner's Interpretation of Appellant's Claimed Barker Channel is Unreasonably Broad.

Appellant argues the Examiner's position that appellant's claimed barker channel includes any video clip, television program, or advertisement that is displayed in a PIP window or advertisement window is particularly unreasonable because (1) it is inconsistent with the term "barker channel" as widely understood by those skilled in the art and (2) it is inconsistent with the express definition (which is consistent with the widely understood meaning) provided in appellant's specification...Barker channel are dedicated promotional television channels that display full-screen promotions (pages 5-6). This argument is respectfully traversed.

The definition of "barker channel" is a TV channel that is used almost entirely for promotion and advertising, usually marketing various features of the service carrying the channel... The TV Guide channel can also be considered a barker channel (see Wikipedia) or Barker Channel - A TV channel used to list or promote programs on other channels (according to itvdictionary.com/definitions).

In addition, barker channel is not necessary dedicated promotional television channels display full-screen motion (please refer to reference in record, US 6,754,905

B2, to Gordon et al. for support. In this reference, Gordon discloses video barker 120 (and associated audio barker) is not a full screen motion - col. 4, lines 29-41, figure 1.)

As Appellant acknowledged, M.P.E.P 2111 states "Claims must be given their broadest reasonable interpretation" and "reading a claim in light of the specification is a quite different thing from reading limitations of the specification into a claim."

Alexander discloses in addition to the tiles representing television programs, a virtual channel ad can be displayed in grid guide 22 on a tile 52. A virtual channel ad may promote, for instance, a current or future television program. Such a virtual channel ad for a television program is linked to the time and channel of the program in RAM so the viewer can watch or record the program automatically (col. 5, lines 5-12). The viewer can also enter the Watch scheduling function by highlighting an Ad Window displaying an advertisement, video clip for a future scheduled program or a Virtual Channel Ad Slot displaying an advertisement for a future-scheduled program (figures 1-7, 8-10; col. 10, lines 13-30, col. 13, line 46-col. 14, line 9, col. 17, lines 41-67). The ad can be display as full screen ad (col. 24, lines 21-30). Thus, the "barker channel" is reasonable interpreted as the channel with television clip, or advertisement of program (e.g., future programs).

Appellant further argues Alexander fails to show or suggest providing a passive program guide or a barker channel and interactive content in response to selecting a branded selectable option (page 6, last four lines). This argument is respectfully traversed.

It is noted that claims 1, 29, 57 recites "...providing, the passive program guide or barker channel and interactive content ...in response to a user selecting the option from the interactive application display".

Alexander discloses when the user highlights a portion associated with a channel on the program guide, the video, video clip, or advertisement, or detail description, etc. of the highlighted channel is displayed on the portion of the display screen (e.g. PIP window, or Ad window) – see include, but is not limited to, figures 1-7, 8-10, col. 3, lines 56-62, col. 4, lines 15-43, col. 13, lines 61-63, col. 17, lines 40-67, col. 19, lines 15-45, col. 20, lines 1-28, col. 26, lines 4-18). Thus, the feature of "providing passive program guide or barker channel in response to a user selecting the option from the interactive application display" is interpreted as providing barker channel (e.g. channel that provides video or video clip, advertisement, or information of the selected television program) in response to user selecting the portion from the interactive TV screen.

2. Even If the Content Shown in Alexander's PIP Window or Ad Windows Could Be Considered a Barker Channel, It Would Still Not Replace a First Interactive Display.

Appellant argues the notion that a first display is replaced by a second display when an area of the first display (e.g., a PIP window) is filled with content is unreasonable. If the Examiner considers Alexander's entire Fig. 5 display screen as the first interactive application display, then this entire display must be replaced by the

passive program guide or barker channel and interactive content (pages 7-8). This argument is respectfully traversed.

The claims recite “providing, in a second display replacing the first display, the passive program guide or barker channel and interactive content...”

Alexander discloses when the user selects a program title on the Grid Guide or highlights the ad window, additional information and/or real time video or video clip of the selected/highlighted television program is displayed on the display screen (see include, but is not limited to, figures 1-7, 8-10, col. 3, lines 56-62, col. 4, lines 15-43, col. 13, lines 61-63, col. 17, lines 40-67, col. 19, lines 15-45, col. 20, lines 1-28, col. 26, lines 4-18). Thus, the claims “first interactive application display” is interpreted as the display screen with interactive icons/windows before a particular television program or particular icon/window is highlighted or selected, and “a second display replacing the first display” is interpreted as the television display screen(display screen with additional information or content of the selected television program and interactive window/icons), after the user selected/highlighted particular icon/television program title replacing the display screen (display screen without information of the selected title/icon) before the particular television or particular title/icon is highlighted/selected.

B. Claims 18-24, 46-52, and 74-80

Appellant argues since Appellant’s claims require the branded passive programming to be provided to the user equipment, the branding must occur prior to sending the programming to the user equipment. As explained in Appellant’s

specification “programming may be branded by the source by the source of the programming... Thus, branded passive programming with an advertisement actually inserted into the programming video source...(page 8-10). This argument is respectfully traversed.

Again, as Appellant acknowledged, M.P.E.P 2111 states “Claims must be given their broadest reasonable interpretation” and “reading a claim in light of the specification is a quite different thing from reading limitations of the specification into a claim.”

In this case, the claims 18, 46, and 74 recite “providing branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment”.

Alexander discloses the advertisement is selected based on particular television being viewed or selected (see include, but is not limited to, col. 18, lines 54-col. 19, line 12, col. 32, line 55-col. 33, line 50, col. 34, line 55-col. 35, line 13). Alexander also discloses...by tuning the television automatically to a particular advertising channel at the time during the telecast of the television program during which an advertisement is scheduled to occur, and by then tuning the television back to the viewer’s chosen television program at the conclusion of the advertisement (see include, but is not limited to, col. 32, line 61-col. 33, line 8). Thus, the limitation of “providing branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment” is interpreted as providing the program (e.g. user chosen television program) with an advertisement associated with the channel/provider,

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etc. of chosen program, and inserted the advertisement to display during the telecast of the chosen television program to the user television device.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Son P Huynh/

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